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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1074

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, an unincorporated association,

Petitioners,

v.

UNITED STATES OF AMERICA,

Defendant.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

The Brief of the United States in Opposition fails to address the issues and seeks the denial of this Petition on the mere conclusion — unsupported by reasoning — that the proper construction and application of the termination laws "does not warrant review by this Court." That assertion is belied by the fact that this Court has

repeatedly declared that Indian rights under termination laws *are* of sufficient importance to merit review. *Menominee Tribe v. United States,* 391 U.S. 404 (1968, *Affiliated Ute Citizens v. United States,* 406 U.S. 128 (1972). Moreover, the importance of these issues transcends the rights of the Utes, for the legislative provisions concerning the eleven tribes terminated are substantially identical. The issues, further, transcend the termination laws themselves, for they are but a revival of policies to end the Indians' status that have been recurring for more than a century. Moreover, Congress has repeatedly declared Indian rights to be — not just important — but of the highest order of importance to this nation, *e.g.,* Act of August 7, 1789, 1 Stat. 50. The President has reaffirmed this Nation's dedication to those rights subsequent to the filing of this Petition.

The effort of the Brief in Opposition to argue away the obvious conflicts between the decision of the Court of Claims and prior decisions of this Court and the Circuits is the classic "distinction without a difference." The Government does not deny the conflicts, but reasons that cases such as *Menominee* are distinguishable because "no treaty rights are involved here." Br. 7. But *Menominee* was based, in large part, upon the provisions of Public Law 280 of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. § 1162 which — significantly — protects Indian rights under any "Federal treaty, *agreement or statute.*" (emphasis added)

The distinction offered, moreover, is no distinction at all. It is the category of "rights" which the Termination Act directed be transferred in severalty which is at issue, not whether Petitioners have any continuing Indian status. There is nothing in *Menominee* that suggests that statutory rights are less inviolate than treaty rights. The reasoning of the Government, and of the Court of Claims, is the same — precisely — as this Court rejected in *Menominee*: that because the termination proclamation ended the mixed-bloods' status as Indians it also, by implication, ended their hunting and fishing rights and interests in intangibles such as reserved water rights. This Court discussed that very reasoning in *Menominee* and then concluded:

> We decline to construe the Termination Act as a backhanded way of abrogating the hunting and fishing rights of these Indians.

Accord, Kimball v. Callahan, 493 F.2d 564 (9th Cir.), *cert. denied,* 419 U.S. 1019 (1974).

At the risk of seeming facetious, we may concede that a black dog may be distinguished from a white one, but that distinction is of no consequence when the issue is the application for a dog license Neither is the distinction the Government offers of consequence to an application to this Court for enforcement of the solemn obligations to these Petitioners. That obligation applies to treaty and statutory rights alike.

By the same token, the fact that the mixed-bloods requested termination (if it were a fact) Br. 6, is no reason for the Government to disregard their rights. The Termination Act plainly directed that "*any* property of the tribe, *real, personal* or *mixed*" (emphasis added), A-10, was to be divided, A-14-15. Implementation of those provisions is all that Petitioners seek herein.

CONCLUSION

The decision of the Court of Claims is in conflict with prior decisions of this Court and the Courts of Appeals and presents issues of national importance that merit review. The Petition should be granted.

Respectfully submitted,

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